

**SEP 19 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ZENAIDA VERAN BELONIO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-75567

Agency No. A72-171-715

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted September 11, 2006\*\*

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Zenaida Veran Belonio, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming an immigration judge's decision denying her application for asylum and withholding

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Nagoulko v. INS*, 333 F.3d 1012, 1015 (9th Cir. 2003), and we grant the petition and remand.

Substantial evidence does not support the agency's adverse credibility determination because it is based on speculation and conjecture. *See Shah v. INS*, 220 F.3d 1062, 1071 (9th Cir. 2000). Belonio's failure to file an asylum application "that was not as complete as might be desired cannot, without more, properly serve as the basis for a finding of a lack of credibility." *Aguilera-Cota v. INS*, 914 F.2d 1375, 1382 (9th Cir. 1990); *see also Singh v. Ashcroft*, 301 F.3d 1109, 1112 (9th Cir. 2002) (explaining the difference between inconsistencies and omissions and holding that the omission of facts from a petitioner's earlier statements cannot be the basis for an adverse credibility finding). The remaining inconsistencies articulated by the IJ are minor, and cannot be viewed as attempts by Belonio to enhance her claim. *See Singh v. Ashcroft*, 362 F.3d 1164, 1171 (9th Cir. 2004).

Having reversed the agency's adverse credibility determination, we grant review and remand to the BIA, pursuant to *INS v. Ventura*, 537 U.S. 12, 16, 123 S. Ct. 353, 154 L. Ed. 2d 272 (2002), for the agency to make a merits determination taking Belonio's testimony as true.

**PETITION FOR REVIEW GRANTED; REMANDED.**